

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DON JACKSON #95116-022,)	CR. NO. 04-00083 DAE
)	CIV. NO. 05-00755-001 DAE
Petitioner,)	
)	
vs.)	
)	
UNITED STATES,)	
)	
Respondent.)	
_____)	

ORDER REQUIRING PRELIMINARY ANSWER

Petitioner Don Jackson has filed a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. It appears that Petitioner is time-barred pursuant to 28 U.S.C. § 2255 para. 6. Accordingly, Respondent is ORDERED, pursuant to Rule 5 of the Rules Governing Section 2255 Cases in the United States District Courts, to file a preliminary answer to the Petition on or before April 28, 2006. Respondents should address whether Petitioner has exhausted his prison administrative remedies and, if so, the date those administrative remedies concluded. Thereafter, the court may require a supplemental answer addressing other procedural issues or addressing the merits of the petition.

Petitioner is given notice that the court is considering dismissing his Petition as time-barred pursuant to 28 U.S.C. § 2255 para. 6. *See Herbst v. Cook*, 260 F.3d

1039, 1042 & n.3 (9th Cir. 2001) (discussing the district court's authority to raise the issue of statute of limitation *sua sponte*). Petitioner may file a Reply to Respondents' Preliminary Answer on or before May 5, 2006, addressing the date his administrative appeal concluded, and setting forth facts, if possible, which would prevent the statute of limitation from running against him. *See id.* at 1043 (stating that the district court must provide petitioner with adequate notice and an opportunity to respond before dismissing the petition on statute of limitation grounds). If the record indicates that the petition is subject to dismissal based on the statute of limitation, the petitioner has the burden of demonstrating that he is entitled to tolling of the statute. *See Smith v. Duncan*, 297 F.3d 809, 814 (9th Cir. 2002).

IT IS SO ORDERED.

Dated: Honolulu, Hawaii, April 21, 2006.



David Alan Ezra
United States District Judge